

09-27

Rulemaking Hearing Rules
of
The Tennessee Department of Human Services

Administrative Procedures Division

Chapter 1240-5-1
Introduction

Amendments

Rule 1240-5-1-.01 Grievances, is amended by deleting the rule in the entirety, and by substituting the following new language, so that as amended, the rule shall read:

Rule 1240-5-1-.01 Grievances.

- (1) When an applicant for or recipient of assistance or services is dissatisfied with any action taken by the Department of Human Services which is within the discretion and control of the Department of Human Services, he/she has the right to timely appeal for a fair hearing by an impartial Department official except where otherwise provided in Vocational Rehabilitation Services appeals under State Rule 1240-5-1-.05 (9), provided that actions taken pursuant to judicial order or which are the subject of pending judicial proceedings shall not be subject to review by a fair hearing.
- (2) Additionally, when any party to an administrative action for child support or related administrative enforcement is dissatisfied with any action taken by the Department of Human Services which is within the discretion and control of the Department of Human Services, and that is listed in T.C.A. §§ 36-5-1001 and 36-5-1002, he/she has the right to timely appeal for a fair hearing by an impartial Department official, provided that actions taken pursuant to judicial order or which are the subject of pending judicial proceedings shall not be subject to review by a fair hearing.

Authority: T.C.A. §§ 4-5-101; 4-5-301; 36-5-1001 and 36-5-1002.

Rule 1240-5-1-.02 Agency Rule-Making, is amended by deleting the rule in the entirety, and by substituting the following new language, so that as amended, the rule shall read:

Rule 1240-5-1-.02 Agency Rule-Making.

- (1) The rules of procedure and practice to determine eligibility for the programs of assistance and services provided by the Tennessee Department of Human Services are not valid or effective against any person or party, nor may they be invoked by the agency for any purpose, until all of the requirements for rulemaking as set forth by the Tennessee Uniform Administrative Procedures Act (as amended) have been met.
- (2) "Rule" means each agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency. "Rule" includes the amendment or repeal of a prior rule, but does not include:
 - (a) Statements concerning only the internal management of state government and not affecting private rights, privileges or procedures available to the public;
 - (b) Declaratory order issued pursuant to T.C.A. § 4-5-223;
 - (c) Intra-agency memoranda;

- (d) General policy statements which are substantially repetitious of existing law.

Authority: T.C.A. §§ 4-5-102(10) and 4-5-207.

Rule 1240-5-1-.03 Legal Base, is amended by deleting paragraphs (1) through (4) in the entirety, and by substituting the following new language, so that as amended, paragraphs (1) through (4) shall read:

Rule 1240-5-1-.03 Legal Base.

- (1) Tennessee's family assistance statutes; the Federal statutes of the Food Stamp Act; the Social Security Act (which includes Public Assistance Temporary Assistance to Needy Families (TANF), Medicaid, and Social Services); the Services for the Blind Statute at 20 U.S.C.A. § 107b(6) and 34 CFR § 395 et seq.; the Rehabilitation Act of 1973, as amended, 29 USCA §§ 701 et seq., 720 et seq., and 722 et seq. and 34 CFR 361 et seq.; and Tennessee Child Support statutes require that there be provisions for appeals and fair hearings for applicants and recipients of assistance and services provided by the Department. The Tennessee Department of Human Services is responsible for fulfillment of Hearing provisions in the assistance and services programs that provide for the hearings before the State Department. Such hearings shall meet the due process standards set forth in the U.S Supreme Court decision in *Goldberg v. Kelly*, 397 US 254 (1970) and the standard set forth in the Federal regulations.
- (2) Title VI of the Civil Rights Act of 1964, 42 USCA § 2000d, prohibits discrimination in the provision of assistance or services to applicants, recipients, or beneficiaries because of their race, color, or national origin.
- (3) The Tennessee Uniform Administrative Procedures Act, as amended, T.C.A. §§ 4-5-301 et seq., requires the use of uniform procedures for the conduct of hearings on appeals held by all state agencies of Tennessee.
- (4) The Tennessee Uniform Administrative Procedures Act, as amended, T.C.A. §§ 4-5-101 et seq., provides for the use of uniform procedures for agency rulemaking.

Authority: T.C.A. §§ 4-5-101 and 4-5-301; T.C.A. §§ 36-5-1001 and 1002; and T.C.A. §§ 71-3-151 et seq.; 7 USCA §§ 2014 and 2015; 20 § USCA 107b; 29 USCA §§ 701 et seq., 720 et seq. and 722 et seq.; 42 USCA § 601 et seq.; 42 USCA § 1396; 34 CFR §§ 395 et seq. and 34 CFR §§ 361 et seq.

Chapter 1240-5-1, Introduction, is amended by redesignating the existing subchapter 1240-5-1-.04 "Administrative Review In Vocational Rehabilitation Services" as 1240-5-1-.05 and amending the Table of Contents accordingly, and by substituting a new subchapter 1240-5-1-.04 to be titled "Scope", so that as amended, the new subchapter shall read:

Rule 1240-5-1-.04 Scope.

- (1) Subject to any superseding Federal or State law, these rules shall govern contested case proceedings before the Department of Human Services and will be relied upon by administrative judges/hearing officers in all contested cases utilizing administrative judges/hearing officers of the Department of Human Services
- (2) Any procedural provision of these rules, which is not subject to a superseding Federal or State law, may be suspended where clearly warranted in the interest of justice.
- (3) In any situation that arises that is not specifically addressed by these rules, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow, where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

Authority: T.C.A. § 4-5-219.

Chapter 1240-5-1, Introduction, is amended by deleting the current language under the redesignated subchapter 1240-5-1-.05, "Administrative Review In Vocational Rehabilitation Services", so that as amended, the subchapter shall read:

Rule 1240-5-1-.05 Administrative Review In Vocational Rehabilitation Services.

- (1) Any applicant or eligible individual who is dissatisfied with any decision made by any staff of the Designated State Unit, as defined in 34 CFR § 361.5(14)(i), more specifically, the Division of Rehabilitation Services, concerning the furnishing or denial of rehabilitation services may request a review of the decision by means of an Informal Administrative Review, Mediation, or a Fair Hearing in accordance with the Federal Rehabilitation Act of 1973, as amended, 29 USCA § 722 et seq.
- (2) The individual must be made aware of his/her rights as follows:
 - (a) the right to an Informal Administrative Review
 - (b) the right to pursue mediation
 - (c) the availability of the Client Assistance Program (CAP)
 - (d) the right to a formal fair hearing.
- (3) Notification of these rights and the availability of CAP should be given:
 - (a) at the time of application;
 - (b) at the time the individual is assigned to a category in Tennessee's order of selection, provided that Tennessee has established an order of selection under 34 C.F.R. § 361.36;
 - (c) when the Individualized Plan for Employment (IPE) is developed; and
 - (d) when services are being reduced, suspended or terminated.
- (4) During any appeal process (Informal Administrative Review, Mediation or Fair Hearing), the applicant or eligible individual must be advised that he/she has the right to be represented by counsel or other advocate selected by the individual and with an opportunity to submit evidence and other information that supports his/her position.
- (5) Continuation or Cessation of Services During Reviews and Appeals.
 - (a) When an applicant or eligible individual requests an Informal Administrative Review, Mediation or Fair Hearing of a decision to cease a service, there shall not be a suspension, reduction or termination of services being provided to an applicant or eligible individual, including evaluation and assessment services and Individualized Plan for Employment (IPE) development, pending a final determination of the Fair Hearing, Mediation or Informal Administrative Review process unless the individual, or as appropriate, the individual's representative, so requests or the Rehabilitation Services Division has evidence that the service(s) at issue were obtained through misrepresentation, fraud, collusion or criminal conduct on the part of the individual or his/her representative.

- (6) An appeal of an Informal Administrative Review, Mediation or a request for a Fair Hearing will be accepted only if filed within the required time limit listed in this section, unless good cause can be shown as to why the appeal or request for a Fair Hearing could not be filed within the required time limit.

- (7) Informal Administrative Review.

An Informal Administrative Review is an informal procedure through which the Division provides an opportunity to an applicant or eligible individual of Vocational Rehabilitation Services and/or his/her representative, to express and seek resolution for his/her dissatisfaction with an action of the Division.

- (a) The individual/applicant must file a request for an Informal Administrative Review, orally or in writing, within thirty (30) calendar days of the date on the notice of the contested action.
- (b) Within five (5) working days of the request in 1240-5-1-.05(7)(a), except when disciplinary sanctions are imposed against the applicant/individual in a Division owned or operated facility, a supervisor shall contact the applicant/individual or as appropriate his/her representative to schedule the Informal Administrative Review. The applicant or individual or, as appropriate, his/her representative shall be informed in writing of the scheduled review date and site. When disciplinary sanctions are imposed against the applicant/individual in a Division owned or operated facility the supervisor shall contact the applicant/individual or, as appropriate, his/her representative immediately to schedule the review.
- (c) The Informal Administrative Review shall be held within fifteen (15) working days from the date of the original request, and within twenty-four (24) hours of the date of the receipt of notice for disciplinary sanctions in a Division owned or operated facility.
- (d) Informal Administrative Reviews are held by the regional supervisory staff of the Division. An Informal Administrative Review shall be conducted during regular agency working hours and located at a time and place convenient to the individual and staff.
- (e) The recommendation of the review shall be in writing and address all issues involved. Within ten (10) working days of the review, all parties involved in the review shall receive written notice of the recommendation.
- (f) Applicants and individuals can be served more quickly using the Informal Administrative Review process. However, under no circumstance should the Informal Administrative Review process be used to deny, delay, discourage, or interfere with the individual exercising his/her right to pursue Mediation or the formal Fair Hearing process. The Division shall make every effort to resolve individual complaints at the Informal Administrative Review Process level.
- (g) Applicants and individuals may be represented by the representative or legal counsel of his/her choosing.

- (8) Mediation.

- (a) Mediation may be requested orally or in writing at any point as a part of due process procedures prior to a formal Fair Hearing. Mediation may be requested without first completing the Informal Administrative Review. Mediation is voluntary on the part of both parties (the Division or the individual/applicant). Mediation shall not be used as a process to deny or delay the right of an individual to a Fair Hearing or any other rights.

The State shall bear the cost of the Mediation process with the exception of the costs related to the representation of an applicant or eligible individual.

(b) Requirements for Mediation include the following:

1. A qualified and impartial mediator as defined in 34 CFR § 361.5(b)(43) must conduct the Mediation process. The applicant/individual has the right to choose the mediator, as available, from a list of mediators maintained by the Division of Rehabilitation Services.
2. Mediation should be scheduled within seven (7) working days of the request for mediation, subject to availability of a suitable mediator. The actual mediation should take place within fifteen (15) working days of the request, subject to availability of a suitable mediator.
3. The mediation should take place at a location convenient to all parties.
4. Discussions that take place during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing under 1240-5-1-.05(9) of these rules or civil proceeding under 1240-5-1-.05(10). The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the mediation process.
5. Any agreement reached by the parties shall be set forth in a written mediation agreement, but if agreement is not reached, the applicant/individual has the right to proceed to a Fair Hearing.
6. Applicants and individuals may be represented by the representative or legal counsel of his/her choosing.

(9) Fair Hearing.

- (a) A Fair Hearing is a formal procedure whereby an applicant or individual who is dissatisfied with any decision made by the Department of Human Services Vocational Rehabilitation Services Division staff concerning the furnishing or denial of services is provided a formal hearing by an Impartial Hearing Officer (IHO) to review the determination.
- (b) An individual may request a Fair Hearing orally, or by formally filing Form HS-0008 with the counselor, the regional/district/local supervisor's office, or facility administrator. The date the request was made must be documented on Form HS-0008 by Division staff.
- (c) The applicant/individual or his/her representative is allowed thirty (30) calendar days after the date of the Informal Administrative Review Written Recommendation or Mediation to request a Fair Hearing, subject to good cause exceptions as determined by the Commissioner/Commissioner's Designee in the Hearings and Appeals Unit.
- (d) When the applicant or individual elects not to utilize the Informal Administrative Review or Mediation process, the request for the Fair Hearing must be filed within thirty (30) calendar days of the notification by the Division to the applicant for, or recipient of services, of the contested action, subject to good cause exceptions as determined by the Commissioner/Commissioner's Designee in the Hearings and Appeals Unit. Time is measured from the date of the notice.
- (e) The requirements for the fair hearing are as follows:

1. The Fair Hearing is to be conducted by an Impartial Hearing Officer (IHO) as defined in 34 CFR § 361.5(b)(25) and is to be held within sixty (60) days of a request by the applicant or individual, unless informal resolution is achieved prior to the sixtieth (60th) day or the parties agree to a specific extension of time. The sixty-day (60) period begins when the request is made orally or in writing. In either event, the date that the request is made for a Fair Hearing must be documented on Form HS-0008.
2. The applicant or individual or, if appropriate, the individual's representative shall be afforded an opportunity to present evidence, information, and witnesses to the Impartial Hearing Officer; to be represented by counsel or other appropriate advocate; and to examine/cross examine all witnesses and other relevant sources of information and evidence.
3. The Impartial Hearing Officer shall make a decision based on the provisions of the approved State Plan and the Rehabilitation Act of 1973, as amended, 29 USCA § 701 et seq.; Federal Vocational Rehabilitation regulations at 34 CFR § 361 et seq. and State Regulations; and policies that are consistent with the Federal requirements. The Impartial Hearing Officer shall provide the decision in writing, to the applicant or individual, or as appropriate to his/her representative, and to the Assistant Commissioner of the Rehabilitation Services Division. The Impartial Hearing Officer's decision, including findings and grounds for the decision, shall be entered within thirty (30) calendar days of the date of the hearing.
4. The Division of Rehabilitation Services shall maintain a list of qualified Impartial Hearing Officers who are knowledgeable in law (including regulations) relating to the provision of Vocational Rehabilitation services. The names of the Impartial Hearing Officers will be identified jointly by the Designated State Unit, as defined in 34 CFR § 361.5(14)(i), more specifically, the Rehabilitation Services Division and members of the State Rehabilitation Council (SRC).
5. The selection of the Impartial Hearing Officer to hear a particular case will be done on a random basis by the Commissioner's Designee for Hearings and Appeals or by agreement between the Assistant Commissioner of the Rehabilitation Services Division and the applicant or eligible individual.
6. The Impartial Hearing Officer's decision is final, except either party that is dissatisfied with the decision of the Impartial Hearing Officer may request, in writing, a review of the decision of the Impartial Hearing Officer within twenty (20) calendar days after entry and mailing of the decision. If the twentieth (20th) day falls on a weekend or holiday, the request must be filed by the following workday. The Commissioner, or the Commissioner's Designee in the Department of Human Services' Hearings and Appeals Unit will conduct the review of the decision of the Impartial Hearing Officer. The Commissioner cannot delegate the responsibility to make the independent final decision to any officer or employee of the Designated State Unit, as defined in 34 CFR § 361.5(14)(i), more specifically the Rehabilitation Services Division, including the Assistant Commissioner of the Rehabilitation Services. During the Commissioner/Commissioner's Designee's review each party shall be provided an opportunity for submission of additional evidence and information relevant to a final decision concerning the matter under review.

7. The Commissioner/Commissioner's Designee in the Hearings and Appeals Unit may not overturn or modify the decision, or part of a decision, of an Impartial Hearing Officer that supports the position of the individual unless it is concluded that, based on clear and convincing evidence, the decision of the Impartial Hearing Officer is clearly erroneous because it is contrary to the approved State Plan; the Rehabilitation Act, as amended, 29 USCA § 701 et. seq.; Federal Vocational Rehabilitation Regulations; State Regulations or policies that are consistent with Federal requirements identified in Title I of the Rehabilitation Act, as amended.
8. Within thirty (30) days of the individual's request for administrative review of the Impartial Hearing Officer's decision as described in 1240-5-1-.05(9)(e)6, the Commissioner/ Commissioner's Designee in the Hearings and Appeals Unit, shall render an independent final decision following a review of the entire hearing record and provide a full report in writing of the decision, including the findings and the statutory regulation or policy grounds for the decision to the applicant or individual or, if appropriate, the individual's representative and to the Vocational Rehabilitation Division staff involved in the Fair Hearing.
9. Reasonable time extensions may be provided for good cause shown at the request of a party or at the request of both parties.
10. The Impartial Hearing Officer's decision will be the final agency decision, if there is not a request for administrative review of the Impartial Hearing Officer's decision to the Commissioner/Commissioner's Designee within twenty (20) calendar days of the entry and mailing of the Impartial Hearing Officer's decision as provided in 1240-5-1-.05(9)(e)6 above.

(10) Petition for Judicial Review In Chancery Court Or Civil Action.

- (a) Any party who is aggrieved by a decision of the Impartial Hearing Officer may seek relief as follows:
 1. A party aggrieved by the decision of the Impartial Hearing Officer may file a petition for judicial review in Chancery Court under T.C.A. § 4-5-322 within sixty (60) days after the Impartial Hearing Officer's decision becomes final; or
 2. A party aggrieved by the decision of the Impartial Hearing Officer may file a petition for judicial review in Chancery Court under T.C.A. § 4-5-322 within sixty (60) days of the entry and mailing of the Commissioner/Commissioner's Designee's independent final administrative review decision of the Impartial Hearing Officer's decision, where the individual sought review of the Impartial Hearing Officer's decision as provided in 1240-5-1-.05 (9)(e) 6; or
 3. A party aggrieved by the decision of the Impartial Hearing Officer may file a civil action within the time period provided for bringing a civil action after the entry and mailing of the Commissioner/Commissioner's Designee's independent final administrative review decision of the Impartial Hearing Officer's decision, where the individual sought review of the Impartial Hearing Officer's decision as provided in 1240-5-1-. 05(9)(e)6. The civil action may be brought in any State court of competent jurisdiction or United States district court of competent jurisdiction without regard to the amount of controversy.
- (b) The decision of the Impartial Hearing Officer, or if reviewed, the independent final administrative review decision of the Commissioner/Commissioner's Designee shall be implemented regardless of whether a party has filed a petition for judicial review in

Chancery Court as provided in 1240-5-1-.05(10)(a)1 or 2 above or a civil action as provided in 1240-5-1-.05(10)(a)3.

(c) In a civil action for judicial review, as provided in 1240-5-1-.05(10)(a)3 above, the Court:

1. Receives the records related to the formal Fair Hearing process and the Commissioner/Commissioner's Designee's administrative review of the Impartial Hearing Officer's decision;
2. Hears additional evidence at the request of a party; and
3. Bases its decision on the preponderance of the evidence, granting the relief the Court determines to be appropriate under the facts and the law.

(11) Vocational Rehabilitation Services fair hearings shall be conducted in conformity with the Federal Rehabilitation Act, 29 USCA § 722(c), 34 C.F.R. §361.57, and the Tennessee Uniform Administrative Procedures Act, as amended, T.C.A. § 4-5-301 et seq. State Rule 1240-5-1-.05 shall govern the procedures for review of service decisions in the Vocational Rehabilitation Program. Any conflict between the Department of Human Services rules governing contested case proceedings and the Tennessee Uniform Administrative Procedures Act, as amended, shall be controlled by the Department of Human Services Rules at 1240-5-1-.05.

Authority: T.C.A. §§ 4-5-105; 71-1-105; 49-11-601 et seq. ; 29 USCA § 701 et seq.; 29 USCA § 705; 29 USCA § 720 et seq.; and 29 USCA §722(c); 34 CFR §§ 361.5 and 361.57; and 66 FR 4380.

The Tennessee Department of Human Services
Administrative Procedures Division

Chapter 1240-5-3
Fair Hearing Requests

Amendments

Rule 1240-5-3-.03 Time Limit For Filing An Appeal, is amended by deleting Subparagraph (a), under Paragraph (1) in the entirety, and by substituting the following language, so that as amended, Paragraph (1), Subparagraph (a), shall read:

(1) The following time limits will be allowed for appeals:

- (a) Vocational Rehabilitation applicants and recipients or individuals acting in their behalf, as set forth in Tennessee State Rule 1240-5-1-.05, will be allowed thirty (30) calendar days after the date of the Informal Administrative Review finding to appeal any action of the Department with regard to the furnishing of, denial of, or failure to deliver Vocational Rehabilitation Services, subject to good cause exceptions as determined by the Commissioner/Commissioner's Designee in the Hearings and Appeals Unit. If the applicant/recipient or individual's representative elects not to utilize the Informal Administrative Review, the appeal as specified in State Rule 1240-5-1-.05 must be filed within thirty (30) calendar days of the action of the Department with regard to the furnishing of, denial of, or failure to deliver Vocational Rehabilitation Services, subject to good cause exceptions as determined by the Commissioner/Commissioner's Designee in the Hearings and Appeals Unit.

Appeals related to the Randolph Sheppard or the Tennessee Business Enterprises Program will be accepted only if they are filed within the time limits specified in State Rule 1240-6-11-.02 and should be appealed as set forth in that rule.

Authority: T.C.A. §§ 71-1-105(12) and 71-4-508; 20 USCA §§ 107d-1 and 107b (6); 29 USCA § 722(c); 34 CFR § 361.57; and 34 CFR §§ 395.4. and 395.13.

The Tennessee Department of Human Services
Administrative Procedures Division

Chapter 1240-5-8
The Final Order

Amendments

Rule 1240-5-8-.01 Time Limitation, is amended by deleting Paragraph (1), Subparagraphs (a), (b) and (c), and by substituting the following language, so that as amended, Paragraph (1), Subparagraphs (a), (b) and (c) shall read:

- (1) Tennessee State Rule 1240-5-1-.05 sets forth the time limits for processing appeals for Vocational Rehabilitation Services. State Rule 1240-6-11-.02 sets forth the time limits for processing appeals related to the Randolph Sheppard or the Tennessee Business Enterprises Program. The maximum time limit for processing appeals is ninety (90) days for the Family Assistance and Social Services Programs, except that Food Stamp Appeals will be processed within sixty (60) days. The postponement of the scheduled hearing in Food Stamp Appeals shall not exceed thirty (30) days, and the time limit for processing the appeal shall be extended because of:
 - (a) Illness of the appellant;
 - (b) Delay in obtaining medical evidence; or
 - (c) Because of circumstances beyond the control of the appellant or the Department.

Authority: T.C.A. §§ 4-5-301, 71-1-105(12) and 71-4-508; 29 USCA § 722(c); 20 USCA §§ 107d-1 and 107b(6); 42 CFR § 431.244; 45 CFR § 205.10(a)(16); 7 CFR §§ 273.15(c); 34 CFR § 361.57(b)(1)(i), (e)(1) and (e)(3)(ii), and (g); 34 CFR §§ 395.4. and 395.13.

Rule 1240-5-8-.03 The Final Order, is amended by inserting a new Paragraph to be numbered (4), so that as amended, the new Paragraph (4) shall read:

- (4) Tennessee State Rule 1240-5-1-.05 sets forth the process for final orders in Vocational Rehabilitation Services Appeals.

Authority: T.C.A. § 4-5-314; 29 USCA § 722(c); and 34 CFR § 361.57(e)(4) and (g).

Rule 1240-5-8-.06 Recovery When The Final Order Upholds The Local Office, is amended by deleting the rule in its entirety, and by substituting the following language, so that as amended, the rule shall read:

Rule 1240-5-8-.06 Recovery When The Final Order Upholds The Local Office. When the final order upholds the local office, any benefits due to continuation of assistance or services pending the hearing decision will be subject to recovery according to the procedures of the Department for recovering benefits, except as relates to Vocational Rehabilitation Services appeals. Vocational Rehabilitation services are subject to recovery where services were obtained through misrepresentation, fraud, collusion or criminal conduct on the part of the individual or his/her representative as provided in State Rule 1240-5-1-.05(5)(a).

Authority: 45 CFR § 205.10(a)(6)(i); 7 CFR § 273.15(s)(2); 42 CFR §§ 431.230(b) and 42 CFR 431.231(b).

The Tennessee Department of Human Services
Administrative Procedures Division

Chapter 1240-5-9
Reconsideration

Amendments

Rule 1240-5-9-.05 Administrative Recourse When Aggrieved By Final Order, is amended by deleting the rule in its entirety, and by substituting the following language, so that as amended, the rule shall read:

Rule 1240-5-9-.05 Administrative Recourse When Aggrieved By Final Order. When an individual being provided Vocational Rehabilitation Services under an Individualized Plan of Employment (IPE) is dissatisfied with the Impartial Hearing Officer's decision resulting from the Fair Hearing as set forth in Tennessee State Rule 1240-5-1-.05(9), the individual may request review as provided in Rule 1240-5-1-.05(9) and (10).

Authority: T.C.A. § 4-5-317; 29 USCA § 722(c); 34 CFR § 361.48 and 34 CFR § 361.57(e)(4) and (g).

Legal Contact or Party who will approve final copy:

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Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

Philip Wagster
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Tennessee Department of Human Services

Lee Anne Bruce
Lee Anne Bruce, Assistant Commissioner
Appeals and Hearings
Tennessee Department of Human Services

Virginia T. Lodge
Virginia T. Lodge
Commissioner
Tennessee Department of Human Services

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services on the 4th day of July, 2004.

Further, I certify that the provisions of T.C.A. § 4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking hearing has been filed in the Department of State on the 30th day of April, 2004 and such notice of rulemaking hearing having been published in the May 14, 2004 issue of the Tennessee Administrative Register, and such rulemaking hearings having been conducted pursuant thereto on the 22nd, 23rd and 25th days of June, 2004.

Phyllis A. Simpson
Phyllis A. Simpson
Assistant General Counsel
Tennessee Department of Human Services

Subscribed and sworn to before me this 4th day of August, 2004.

My Commission Expires
August 20, 2006
Notary Public

My commission expires on the ___ day of _____.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Paul G. Summers
Paul G. Summers
Attorney General and Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 30 day of July, 2004 and will become effective on the 14 day of Dec., 2004.

RECEIVED
2004 SEP 30 AM 11:47
SECRETARY OF STATE

Riley C. Darrell
Riley C. Darrell
Secretary of State

By: [Signature]